

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Interim Director of the Department of Health, pursuant to the authority set forth in § 16 of the Choice in Drug Treatment Act of 2000 ("Act") (D.C. Law 13-146; D.C. Official Code § 7-3015), and Mayor's Order 2002-73, dated April 3, 2002, hereby gives notice of the adoption of the following amendment to Title 29 of the District of Columbia Municipal Regulations (DCMR). The rule adds a new chapter 24 to establish the requirements for participation by substance abuse treatment programs and qualifications of individuals for treatment in the Drug Treatment Choice Program.

The Department initially published a Notice of Emergency and Proposed Rulemaking on September 20, 2002, at 49 DCR 8758. A second Notice of Emergency and Proposed Rulemaking was published on December 6, 2002, at 49 DCR 11039. The rules were transmitted to the Council of the District of Columbia for review on September 24, 2003, and referred to the Committee on Human Services on October 7, 2003. The rules were deemed approved after a 45-day period of Council review on December 15, 2003. The Department received one comment on the proposed rules concerning proof of residency for homeless persons, and the Interim Director has chosen not to adopt the recommended change. There have been no changes to the rule since the publication of the Notice of Emergency and Proposed Rulemaking on September 20, 2002.

Title 29 (Public Welfare) (May 1987) of the DCMR is amended by adding a new Chapter 24 to read as follows:

CHAPTER 24 CHOICE IN DRUG TREATMENT

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2400 GENERAL PROVISIONS

- 2400.1 This chapter, and Chapter 23 (Certification Standards for Substance Abuse Treatment Facilities and Programs) of Title 29 of the D.C. Municipal Regulations, shall apply to the certification of substance abuse treatment programs eligible to participate in the Drug Treatment Choice Program (DTCP).
- 2400.2 The Department shall implement the DTCP to provide District residents with access to substance abuse rehabilitation and aftercare services at the certified substance abuse treatment program of their choice in consultation

with a qualified substance abuse counselor, subject to the availability of funds in the Addiction Recovery Fund (Fund).

- 2400.3 Any resident who presents at the Central Registry Division or any secondary intake site for admission to a substance abuse treatment program shall receive the standardized clinical intake screening and assessment necessary to determine eligibility for substance abuse treatment and to determine the level of care the person will require for treatment of the person's presenting problems.
- 2400.4 Any information an applicant furnishes to the Department pursuant to the Act shall remain confidential according to the requirements of 42 CFR Part 2, this chapter, and any other federal and District laws and regulations regarding the confidentiality of patient records and health information.

2401 CERTIFICATION

- 2401.1 A substance abuse treatment program shall be eligible for full certification and full participation in the DTCP when the substance abuse treatment program satisfies the following requirements:

- (a) Has a valid certification from the Department as a qualified substance abuse treatment program under Chapter 23 of this title; and
- (b) Complies with any other conditions for certification under the Act, as established by the Department and as specified in this Chapter or satisfies the requirements for transitional or provisional certification pursuant to § 2401.9, 2401.10, and 2401.11.

- 2401.2 An applicant for DTCP certification shall submit an application to the Department with the required fees and attachments for each separate program for which the treatment program seeks certification. The Department may consider and accept the electronic submission of these materials when electronic submission systems are developed and available. The application shall include the following:

- (a) An updated copy of each substance abuse treatment program's application for certification under Chapter 23 of this title or a letter from the Department exempting the substance abuse treatment program from this requirement. Application updates shall include, but not be limited to:
 - (1) Current staff licenses and registrations;
 - (2) Current licensures for opioid treatment programs;

- (3) Current organizational chart and staffing plan;
 - (4) Current written agreements with entities providing program services; and
 - (5) Current program certifications, licenses, letters of accreditation, District and federal registrations for controlled substances, and other appropriate certificates;
- (b) A description of the current certification status of each program offered under Chapter 23 of this title. Substance abuse treatment program that have submitted a complete application to the Department but have not yet received certification may be eligible for certification in the DTCP on a provisional basis as specified in § 2401.10;
- (c) Documentation to support the substance abuse treatment program's success in the treatment modality for which it is seeking DTCP certification as specified in § 2401.3 (a);
- (d) Documentation of the substance abuse treatment program's financial resources and sources of future revenues adequate to support operations as specified in §§ 2401.3 (b) and 2401.4; and
- (e) Documentation to support the substance abuse treatment program's ability to ensure patient health, safety, and welfare as specified in section § 2401.11.

2401.3 In addition to complying with the requirements of Chapter 23 of this title, substance abuse treatment program wishing to participate in the DTCP shall comply with the following additional requirements:

- (a) A substance abuse treatment program requesting certification shall provide evidence of success in the type of treatment modality or rehabilitation service for which it is seeking certification consisting of the following:
- (1) The substance abuse treatment program shall be fully operational for at least twelve (12) months before it submits an application. A substance abuse treatment program is fully operational after it is fully staffed and its active caseload is at least seventy-five per cent (75%) of capacity;
 - (2) All of the substance abuse treatment program's employees shall be certified as required by the Health Occupation Revision Act (HORA) of 1985, effective March 25, 1986

(DC Law 6-99; DC Code 52-3301 *et seq.*) and any rules promulgated pursuant to the HORA; and

- (3) The substance abuse treatment program shall have a system that provides data on outcome measures; and
- (b) A substance abuse treatment program shall demonstrate that its available financial resources and its sources of future revenues are adequate to meet all necessary and proper capital and operating expenses by providing the following:
 - (1) An expense and revenue budget for the current year as approved by the substance abuse treatment program's governing board;
 - (2) An expense and revenue budget for the last completed year of operation;
 - (3) Year-end actual expense and revenue statements for the last completed year of operation; and
 - (4) Other financial records that the Department may request including, but not limited to, the following:
 - (A) Notice of Grant Awards;
 - (B) Contracts;
 - (C) Bank statements; or
 - (D) Bank line-of-credit equal to or greater than ninety (90) days of operating expenses.

2401.4 If a substance abuse treatment program is unable to satisfy the demonstrations of financial viability required by § 2401.3(b), the Director may require the substance abuse treatment program to post a surety bond of not more than fifty-thousand dollars (\$50,000) before the substance abuse treatment program may be certified to participate in the DTCP.

2401.5 Except as provided in subsection § 2401.6, each substance abuse treatment program shall renew its DTCP certification annually.

2401.6 Annual certification review shall be waived if the substance abuse treatment program is in substantial compliance with this chapter for two (2) consecutive certification reviews as determined by periodic inspections. A substance abuse treatment program shall be ineligible for waiver of the annual certification review if any of the following occurs:

- (a) The Department revokes, suspends, or denies the substance abuse treatment program's certification under Chapter 23 of this title or under § 2402 of this Chapter;
 - (b) The Department reduces the substance abuse treatment program's certification status from full to provisional certification under Chapter 23 of this title; or
 - (c) The substance abuse treatment program fails to correct deficiencies according to the approved corrective action plan.
- 2401.7 Notwithstanding qualification for waiver of annual certification review by maintaining substantial compliance pursuant to § 2401.6, the Department may inspect a substance abuse treatment program certified pursuant to this chapter at any reasonable time, with or without notice, upon the presentation of appropriate credentials to the owner, operator, or agent in charge.
- 2401.8 Before a substance abuse treatment program initiates a substantial change in the scope of its services by adding or eliminating programs it shall apply for recertification under this chapter and shall not eliminate or add a service until the Department certifies the change.
- 2401.9 The Department may grant transitional certification to a substance abuse treatment program. Transitional certification may continue in effect for as long as the substance abuse treatment program satisfies the following requirements:
 - (a) The substance abuse treatment program remains in good standing as a certified substance abuse treatment program pursuant to Chapter 23;
 - (b) The substance abuse treatment program complies with § 2401.5 and 2401.6;
 - (c) The substance abuse treatment program is fully or provisionally certified pursuant to 29 DCMR Chapter 23; and
 - (d) The substance abuse treatment program has submitted a complete application to the Department for certification under DTCP.
- 2401.10 The Department may grant provisional certification to a substance treatment program that is not fully certified under Chapter 23 of this title provided it has submitted a complete and accurate application to the DOH for full certification under Chapter 23. The Director shall not grant provisional certification to a substance abuse treatment program if the

provisional certification would adversely affect patient health, safety, or welfare. The Director shall not grant provisional certification to a substance abuse treatment program if its Chapter 23 certification has been denied, suspended, or revoked. To receive a provisional certification the substance abuse program shall submit to the Department a copy of all information required by § 2401.2 and 2401.3. A provisional certification shall be valid for not more than one (1) year plus a one-time extension of not more than one hundred eighty (180) days to protect public health and safety. To receive the extension the substance abuse treatment program shall submit a statement requesting the extension, explain its efforts to obtain full Chapter 23 certification, and supply a schedule for obtaining full certification. The Director shall not grant an extension if he or she determines that patient health, safety, and welfare would be adversely affected by granting provisional certification.

2401.11 Substance abuse treatment program shall ensure patient health, safety, and welfare by complying with the following criteria:

- (a) Demonstrate success in providing certified services pursuant to § 2401.3 (a);
- (b) Demonstrate fiscal viability pursuant to § 2401.3 (b);
- (c) Maintain an organized system of record keeping to ensure confidentiality of patient medical information;
- (d) Retain adequate staff and space to ensure patient treatment needs;
- (e) Provide evidence of clinical care based on a comprehensive needs assessment, an identified problem list, and a master treatment or rehabilitation plan with periodic updates, and regular progress notes in the patient's record;
- (f) Obtain a Certificate of Occupancy for use as a substance abuse treatment facility;
- (g) Maintain a physical facility free of building code violations that could endanger patients, staff, or visitors;
- (h) Continuously comply with local and federal laws regarding all certificates, licenses, and accreditation required as a condition of operation including, but not limited to, Certificate of Need, Center for Substance Abuse Treatment certification for opioid treatment programs;

- (i) Conduct criminal background checks to ensure that staff have not been convicted for fraud, financial misconduct, physical or sexual abuse, or improper clinical practices;
- (j) Allow the Department to enter and inspect any facility during reasonable hours or review any records necessary to determine compliance with these requirements; and
- (k) Not have serious violations or repeat violations of patient rights pursuant to 29 DCMR 2329.

2402 SUSPENSION, REVOCATION, AND DENIAL

2402.1 The Department may revoke, suspend, or deny a certificate issued pursuant to this chapter according to the procedures established in and for the reasons given in 29 DCMR §2367. The Department may also suspend, revoke, or deny a certificate issued pursuant to this chapter for the following additional reasons:

- (a) Performing a type of rehabilitation service for which the substance abuse treatment program has not been certified;
- (b) Billing or accepting payment for services not provided;
- (c) Misrepresenting the qualifications of the person providing the service;
- (d) Billing for a different quantity or quality of medications than actually provided; or
- (e) Providing a type of treatment for which the client has not given informed consent.

2403 INTAKE AND ASSESSMENT

2403.1 Substance abuse treatment program shall use standardized intake forms and standardized procedures for intake, assessment, and placement of patients approved by the Department.

2403.2 The Department shall determine eligibility for participation in the DTCP at the conclusion of the intake and assessment process.

2403.3 The Department shall inform a patient who is eligible for the DTCP of his or her right to select the substance abuse treatment program of his or her choice from the entire spectrum of certified substance abuse treatment programs in consultation with a qualified substance abuse counselor.

2404 RESERVED

2405 ELIGIBILITY

2405.1 Any person seeking substance abuse treatment shall participate in an eligibility determination process and shall meet the following eligibility requirements before qualifying to participate in the DTCP:

- (a) The applicant shall provide proof of District residency by presenting one (1) of the following:
 - (1) A valid motor vehicle operator's permit issued by the District;
 - (2) A non-driver identification card issued by the District;
 - (3) A voter registration card with an address in the District;
 - (4) A copy of a lease or a rent receipt for real property located in the District;
 - (5) A utility bill for real property located in the District; or
 - (6) A copy of the most current federal income tax return or Earned Income Credit Form.
- (b) A participant in the DTCP shall maintain District residency while participating in the DTCP. The Department may require a participant to produce evidence of continued District residency while receiving treatment in the DTCP.
- (c) An applicant shall attest, under penalty of perjury, that he or she lacks insurance coverage for the services necessary to treat addiction;
- (d) An applicant shall provide proof of inability to pay the full charges for services. Proof of inability to pay may include any of the following:
 - (1) Originals or copies of all earnings statements received within the previous thirty (30) days;
 - (2) A copy of the first two (2) pages of a District of Columbia tax return for the most recent tax year;
 - (3) A copy of the first page of a Federal tax return for the most recent tax year;

- (4) For newly employed applicants, a copy of an offer of employment that states the amount of salary to be paid;
 - (5) A copy of a Social Security or worker's compensation benefit statement;
 - (6) Proof of child support or alimony received; and
 - (7) Proof of any other benefits.
- (e) An applicant shall provide all information the Department may request for the purpose of determining the applicant's eligibility for Medical Assistance (Medicaid), or eligibility for payment for treatment on a sliding fee schedule, or both.

2405.3 Priority for placement in the DTCP shall not be based on the order in which the Department receives applications. Instead, the order of priority for placement, as funds and treatment spots become available, shall be as follows:

- (a) A pregnant woman;
- (b) An eligible minor;
- (c) A parent, guardian, or other person who has legal custody of a minor; and
- (d) Any other person who qualifies for treatment by satisfying all of the requirements in § 2405.1

2405.4 All payments for treatment through the DTCP are subject to the availability of funds in the Fund. Nothing in this chapter shall be construed to create an entitlement to substance abuse treatment during any fiscal year. The ability of any person to participate in the DTCP is dependent on whether funds remain available to the District government under a District or Federal appropriation that has been enacted for the specific purpose of providing substance abuse treatment services.

2499 DEFINITIONS

2499.1 The meanings ascribed to the definitions appearing in § 2399.1 of Chapter 23 shall apply to the terms in this chapter.

2499.2 When used in this chapter, the following terms shall have the meaning ascribed:

Act--the Choice in Drug Treatment Act of 2000 (D.C. Law 13-146; D.C. Official Code § 7-3001 *et seq.*), effective July 18, 2000.

Addiction Recovery Fund or Fund--the fund established by § 5 of the Act

Drug Treatment Choice Program or DTCP--the substance abuse treatment program established by § 3 of the Act.